

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Austin, Texas

STARTRAN, INC.

Employer

and

Case No. 16-RC-10105

TEAMSTERS LOCAL 1110

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>1</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties stipulated, and I find, that Startran, Inc. is a private Texas not-for-profit corporation, with an office and place of business in Austin, Texas, where it provides transit operation services to Capital Metro. During the past 12 months, a representative period, the

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<sup>1</sup> The Petitioner and the Employer filed briefs which were duly considered.

Employer derived gross revenues in excess of \$250,000. During this same period, the Employer purchased and received at its Austin, Texas place of business services (insurance) valued in excess of \$50,000 directly from points located outside the State of Texas.

3. The labor organization involved claims to represent certain employees of the Employer. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce does not exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Petitioner seeks to represent all fixed route field supervisors and fixed route dispatchers at the Employer's Austin, Texas station. The Employer contends that the petitioned-for employees are supervisors as defined by Section 2(11) of the Act and that the instant petition should be dismissed. The Employer's Fixed Route Operations consist of a president, one director of transportation, one assistant director of transportation, one dispatch coordinator, two fixed route superintendents, and one assistant superintendent. Director of Transportation Brian Whelan reports directly to President Gerald Robichaux and Dispatch Coordinator Andre Williams and Superintendents Diana Alvarado and Gary McCray report directly to Whelan. Assistant Superintendent Thomas Brisco reports to both Alvarado and McCray. Six run dispatchers and five radio dispatchers report directly to Williams. There are 17 fixed route supervisors (herein supervisors) who report to Brisco, Alvarado, and McCray. The Employer also employs 460 bus operators. The record reflects that approximately 32 operators may be assigned to a supervisor at any

one time. Amalgamated Transit Union Local 1091 currently represents a unit consisting of the Employer's operators.

### **Fixed Route Supervisors**

The record reflects that the Employer's supervisors have responsibility for overseeing and directing the work of the Employer's bus operators. When an operator reports to work, a supervisor assigns him a bus and makes sure that the operator has all the necessary equipment. All 17 supervisors rotate this lot dispatch responsibility on a daily basis. Supervisors, like the superintendents and the assistant superintendent, are salaried employees. Operators are paid on an hourly basis. Supervisors are paid a straight rate for overtime whereas operators are paid time and a half. Both operators and supervisors have uniforms provided by the Employer and receive an annual uniform allowance of \$300.

The record reveals that supervisors are responsible for monitoring route operations and handling matters that interfere with these operations, such as on-time performance, passenger complaints, hazards, accidents, and mechanical breakdowns. Regarding operator on-time performance, supervisors wait at locations within their assigned sectors and check the arrival and departure times of the buses. Supervisors record operator arrival and departure times on Supervisor Daily Report forms, sign the reports, and submit them to the assistant superintendent at the end of the workday. Supervisors do not make any dispositions regarding discipline or recommend any disciplinary action on these forms.

Supervisors are also responsible for counseling operators with regard to customer complaints. When a supervisor receives a Customer Call Report at the station, he meets

and speaks with the operator on the route about the contents of the complaint. During this consultation, the supervisor obtains a written response to the complaint from the operator. Supervisors instruct operators on proper company procedures regarding the conduct in the complaint but do not discipline operators during counseling. Once the Customer Call Report is completed, supervisors submit them to the assistant superintendent without further comment.

In addition to the foregoing, supervisors are also responsible for investigating accidents and filing Accident Incident Reports with the assistant superintendent detailing the facts of the accident. After an accident occurs, supervisors are contacted by radio dispatchers, informed of the accident's location, and given background facts on the accident and the operator involved. After arriving at the scene, the supervisor takes pictures, talks to the operator and witnesses, and confers with any police officer who may also be investigating the scene. While at the scene, supervisors make a determination as to whether the accident was preventable or non-preventable. In making such a determination, supervisors take into consideration whether the police issued the operator a citation, if the operator did everything possible to avoid the accident, and if the operator was driving in an unsafe manner. Supervisors are not required to consult with the assistant superintendent or the superintendents when making their preventable determination.

The accident report contains no section in which a supervisor may record a recommendation concerning disciplinary action. In preparing the accident report, if the fixed route supervisor makes a determination that the accident was preventable, the supervisor contacts a radio dispatcher and determines whether the operator had any prior

preventable accidents within the previous twelve months. Pursuant to the Employer's policy, if an operator has two preventable accidents within a twelve-month period, the supervisor suspends the operator. The record reflects one incident where a supervisor notified a superintendent that he had to suspend an operator for having three preventable accidents within a twelve-month period.

The record further reflects that supervisors are responsible for monitoring operator adherence to applicable labor agreement requirements and the Employer's policies and procedures. If a supervisor observes an operator violating the labor agreement or any of the Employer's policies and procedures, the supervisor prepares a Fixed Route Services Violations/Commendation report and submits this report to the assistant superintendent. In these situations, supervisors also counsel or "reinstruct" operators regarding proper company policy and procedure. Supervisors are not required to consult with the assistant superintendent when deciding a violation has been committed or when deciding to issue a violation report. Supervisors do not see the report once it is given to the assistant superintendent and do not follow up on any discipline that may later be issued to an operator by the assistant superintendent or superintendent. Superintendents use the violation reports as a basis to discipline operators.

If a supervisor observes an operator running early or late on a route, the supervisor informs the operator of the transgression and issues the operator a citation that details the violation. While in the field, supervisors have the authority to pull an operator out of service. If a supervisor observes an operator driving recklessly, the supervisor informs the operator he is driving recklessly and issues the operator a violation report.

The record reflects that supervisors make all of these decisions without consulting with the superintendents or the assistant superintendent.

Supervisors also have the authority to route buses around hazardous conditions. Operators cannot make such detours without first consulting with a supervisor. Supervisors also have the authority to pull an operator out of service if that operator is observed to be in an impaired condition. Supervisors have the authority to direct an operator to submit to a drug test if that operator is observed by the supervisor to be in an impaired condition and another supervisor confirms this condition. If an operator refuses to meet with a supervisor or to stop driving upon the instruction of a supervisor, the supervisor issues the operator a citation and notes the operator was insubordinate on the violation report. Again, the record reflects that supervisors make these field decisions without consultation with the superintendents or the assistant superintendent.

The record reflects supervisors do not routinely operate buses. Instead, they use vans provided by the Employer to drive their routes and check on their assigned operators. Supervisors are authorized to drive buses in emergency situations. Additionally, supervisors drive buses once a year for a very short period for training purposes. When a supervisor is sick or is otherwise unavailable, there are five or six operators who are qualified to assume the supervisor's duties until the supervisor returns. Supervisors only perform minor maintenance on buses with mechanical problems. Supervisors have the authority to take a bus out of service if it is unsafe or if the bus is experiencing mechanical problems. When there are mechanical breakdowns, accidents, or emergency situations, supervisors use their vans to transport passengers to their destinations. Supervisors have authority to override wheelchair lifts when these lifts

malfunction and do so using special keys to open a panel on the bus that allows the supervisor to override the lift so passengers can disembark from the bus. Operators do not have the keys necessary to override the wheelchair lifts.

The record further reflects that supervisors do not perform merit reviews and do not recommend employee rewards or pay increases. Supervisors do not hire, fire, lay off, transfer, recall, or promote employees, nor recommend such actions. The record reflects some supervisors have participated in the interview process but made no determination concerning hiring. Supervisors do not adjust employee grievances or participate in operator grievance meetings. Fixed route supervisors attend monthly meetings with the assistant superintendent to discuss procedures, operations, scheduling, and personnel problems. Occasionally, one or both of the superintendents will attend these meetings.

Individuals who possess any of the authorities enumerated in Section 2(11) of the Act are supervisors. *Allen Services Co.*, 314 NLRB 1060 (1994). In the instant matter, the evidence establishes that supervisors possess the required indicia. The evidence reflects that supervisors have and exercise authority to suspend operators when supervisors determine that an operator has two or more preventable accidents within a twelve-month period. The record also reflects that supervisors issue verbal warnings to operators when addressing poor driving concerns. The evidence reveals that supervisors exercise independent judgment when deciding whether to take an operator out of service, whether to reroute buses around hazards, whether to file violation reports against operators for infractions of the labor agreement and company policies and procedures and whether an accident is preventable or not. Employees who must and do exercise

independent judgment in directing other employees have been found to be supervisors within the meaning of Section 2(11). *Sears Roebuck & Co.*, 304 NLRB 193 (1991).

In its brief, the Union relies on *Bechtel, Inc.*, 225 NLRB 197 (1976), in support of its contention that supervisors must be included in any unit found appropriate herein. Specifically, the Union analogizes the supervisors in this matter to the quality control inspectors found in *Bechtel*. The Union's reliance on *Bechtel* as it relates to this matter is misplaced. First, the holdings in *Bechtel* address whether the quality control inspectors were managerial employees rather than supervisory employees. Second, the quality control inspectors in *Bechtel*, unlike the supervisors in the instant matter, did not exercise any independent judgment in the performance of their duties. In the instant case, the record reveals numerous examples of supervisors exercising independent judgment. Third, there was no evidence in *Bechtel* that quality control inspectors counseled employees or made determinations affecting employee status, in contrast to the supervisors in the instant matter. Accordingly, the facts in this case are distinguishable from those in *Bechtel*.

Finally, supervisors in the instant matter attend monthly meetings with other supervisory employees and discuss operational and personnel matters. The evidence also shows that if the 17 supervisors at issue in this matter were not found to be supervisors within the meaning of Section 2(11) of the Act, there would only be two superintendents and one assistant superintendent responsible for supervising 477 operators and supervisors. Under such circumstances, the Board will not overlook the impracticality and unreasonableness of such a ratio. *San Diego Transit Corporation*, 182 NLRB 428 (1970); *Pennsylvania Truck Lines*, 199 NLRB 641, 642 (1972). Based on the above and



the record as a whole, I find that fixed route supervisors responsibly direct the work of operators and exercise the authority which make them supervisors within the meaning of Section 2(11) of the Act. *United Transit Company*, 106 NLRB 1047, 1048 (1953); *San Diego Transit Corporation*, 182 NLRB at 428. Accordingly, I have determined that fixed route supervisors are not properly included in the unit proposed by the Petitioner.

### **Run Dispatchers**

Based on my determination that fixed route supervisors are supervisors within the meaning of Section 2(11) of the Act, I need not and shall not make a determination as to the supervisory status of run dispatchers because I find the unit sought by the Petitioner in the instant petition to be inappropriate. Exclusion of the petitioned-for supervisors would result in a seventy-four percent diminution in the size of the unit proposed by the Petitioner. Such a substantial numerical disparity between any appropriate unit and the unit requested by the Petitioner in the instant matter, which impermissibly combines supervisors with potential rank and file employees, renders the unit in question wholly inappropriate. Further, the Petitioner did not indicate during the hearing or in brief a willingness to represent a unit solely of run dispatchers and did not indicate a willingness to proceed to an election in a unit smaller than the one sought in the petition. Based on the foregoing, I find the petitioned-for unit to be inappropriate and I dismiss the petition. *Hearst Broadcasting Corporation*, 267 NLRB 326, 328 (1983); *Fred Finch Children's Home, Inc.*, 243 NLRB 77, 78 (1979); *Westinghouse Broadcasting Company, Inc.*, 195 NLRB 339, 340 (1972).

### **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 26, 1999.

**DATED** May 12, 1999, at Fort Worth, Texas.

/s/ Martha Kinard  
Martha Kinard, Acting Regional Director  
NLRB Region 16

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